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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,922	02/05/2004	Takeshige Yokota	005184.107294	5247

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EXAMINER	
WEINSTEIN, STEVEN L	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/772,922	YOKOTA, TAKESHIGE	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

RESET

A SHORTENED STATUTORY PERIOD FOR REPLY IS ~~SET~~ TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 March 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

This Office action is responsive to a telephone call from Mr. Schneider on 7/18/06. Mr Schneider pointed out that the Office action mailed 5/25/06 was not received and had been returned by the Post Office to the PTO because the PTO had not changed the mailing address as previously requested in a change of address request. Upon reviewing the file, Mr. Schneider is correct. Accordingly, the Office action mailed 5/25/06 is enclosed herein and the SSP for response set in the Office action is reset based on the mailing date of this communication.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savoir ('455), in view of Denny, Sasaki, Ito, Lynn, Serdar and Spector, further in view of Toppan Printing and Carmichael, further in view of Clay.

In regard to claim 1, Savoir discloses a beverage container with a packet device which packet device is attached to the beverage container. Claim 1 now recites that the packet device is attached to the beverage container neck, which is also disclosed by Savoir (e.g. col.2 lines 2 plus – "fitted on the neck of a bottle or similar container". Claim 1 also now recites that the packet device contains powdered tea or other powdered substances. Savoir discloses that the packet device can contain tablets, capsules pills, or the like having any relationship with respect to the contents of the bottle or of the container and that the additive can be sweeteners and flavorings. Denny (6,372,270),

Sasaki (JP 2003-310158), Ito (JP 10-194352), Lynn ('778), Serdar ('496) and Spector ('740) can be relied on to teach it was well established in the art to associate a container with an additive package – in or out of the container – wherein the additive can be any material to be added to the contents of the container including powdered substances such as tea, nutritional compositions, etc. To modify Savoir and provide powdered tea or other powdered substance for its art recognized and applicants intended function would therefore have been obvious. Claim 1 also now recites that the packet is vacuum packed. Vacuum packing is, of course, notoriously conventional in the art. Vacuum packing is generally employed when one is desirous of minimizing oxidation of the product by eliminating air. Toppan Printing (JP 4-310731) and Carmichael et al can be relied on as evidence of the conventionality of packaging tea under vacuum. To modify the combination and substitute one conventional packaging expedient for another conventional packaging expedient; i.e., a vacuum package for a blister pack for its art recognized and applicants intended function is seen to have been obvious. Clay is relied on as further evidence of the conventionality of a product containing packet device being attached to a beverage container neck. In regard to claim 2, the particular amount of powdered product one chooses to package in the packet is seen to have been an obvious result effective variable, being an obvious function of the serving size intended, the strength of the particular product, etc. In regard to claim 4, the use of aluminum in packaging for its barrier properties is notoriously conventional as evidenced e.g., by Savoir, Toppan Printing, Clay, and Carmichael. Claim 5, which recites the packet, is rejected for the reasons given above.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1,2,4 and 5 above, and further in view of Bowman ('490) for the reasons given in the Office action mailed 9/1/05.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Toppan Printing ('731).

Toppan Printing discloses a vacuum packed packet device with a powdered substance such as tea contained therein, which packet would be capable of attaching to the neck of a beverage container. For example, the packet would be capable of attachment with adhesive tape or peelable adhesive. This is all that claim 5 positively recites.

In summary, applicant has combined a series of conventional expedients in the art, employed them for their art recognized function, and achieved no new or unexpected result therefrom.

All of applicants remarks have been fully and carefully considered, but are seen to be moot in view of the new ground of rejection necessitated by applicants amendment.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein

STEVE WEINSTEIN
PRIMARY EXAMINER